

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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JAMES LUKE,

Plaintiff,

v.

Correctional Officer LENZ,

Defendants.

ORDER

09-cv-91-slc

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This is a proposed civil action for monetary relief, brought under 42 U.S.C. § 1983. Plaintiff James Luke, who is presently confined at the Columbia Correctional Institution in Portage, Wisconsin, brings an excessive force claim against defendant Lenz, a correctional officer at the prison. Defendant has filed a motion for summary judgment based on plaintiff's failure to exhaust administrative remedies.

Now plaintiff has filed a motion to voluntarily dismiss his complaint. Because defendant's motion for summary judgment comes early in the proceedings and relates to whether plaintiff has exhausted his administrative remedies rather than the substance of the case, I will grant plaintiff's motion and dismiss this case without prejudice. However, plaintiff should be aware that should he choose to refile this case at a later date, he may still have to show that he has exhausted his administrative remedies.

ORDER

IT IS ORDERED that plaintiff's motion to voluntarily dismiss this case is GRANTED; the case is DISMISSED without prejudice to plaintiff filing a new lawsuit against defendant at

a future time. The clerk of court is directed to close the case.

Entered this 15<sup>th</sup> day of May, 2009.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge